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IN THE

Supreme Court of the United States

October Term, 1954
No. 462.

HALLDORA KRISTIN SIGURDSON,

Petitioner,

vs.

H. R. LANDON, ALBERT DEL GUERCIO and HENRY GRATTAN,

Respondents.

Petition for Rehearing of Order Denying Petition for Writ of Certiorari.

Halldora Kristin Sigurdson prays that this Court grant rehearing of its order of January 10, 1955, denying the petition for writ of certiorari, and that a writ of certiorari issue to review the judgment of the Court of Appeals for the Ninth Circuit in the above entitled case as prayed for in the petition filed November 26, 1954, herein.

Reasons for Granting Rehearing and Issuing Writ of Certiorari.

Eagles v. Samuels, 329 U. S. 304, 311, has pronounced the doctrine that this petitioner must show that the procedural irregularities at her deportation hearing deprived her of basic and fundamental safeguards amounting to a lack of due process.

If this be true, and we believe it to be a fair statement of the Eagles ruling, it resolves itself into a question of whether the evidence collides with established principles of fair play and decency. While this Court ordinarily does not have the time to concern itself with mere disputes as to evidence, the guideposts laid down in *Holland v. United States*, No. 37, O. T., 1954, and decided December 6, 1954, sets forth guiding lights which were knocked out by the Hearing Officer in this petitioner's deportation hearing.

True, Holland is a criminal matter, but, we urge with the powerful cry of conscience, what penalty can be more severe than deportation? The traditional safeguards of liberty were swept aside at the hearing and not considered by the arbitrary ruling of the trial court, *infra*.

The record before this Court is incapable of being honestly disputed in that:

1. The Examining Officer handed to the Hearing Officer eight (8) Dictaphone belts as the belts of the preliminary examination, yet only five (5) were made part of record by Hearing Officer after that number was all required to make up alleged statement, Exhibit 7 [Tr. 107, 145-146];

2. The investigating officers testified that there should be a "click" on the playback of the belts to indicate each time the Dictaphone was stopped [Tr. 69, 120] and on two (2) different occasions, the Hearing Officer took "judicial knowledge" of this fact [Tr. 69, 120]; how can respondents charge that there was no proof (Resp. Br. 11) when it is a matter of record and a human life is involved?

3. That the trial court failed to read the record submitted and after once admitting it had not read the record (Pet. 13), subsequently admitted on July 15, 1953, as follows:

"The Court: Just let the record show I read all that was necessary." [Rep. Tr. July 15, 1953, at p. 93.]

If the trial court had read the record, it would have seen that the respondents were attempting to mislead it as respondents brief at page 11 attempts to do with this Court regarding the materiality of the missing three (3) belts for the reference in respondents brief refers to at least one belt made subsequent to hearing and two belts foreign to petitioner's examination, and the record is positive that eight belts were employed to make statement [Tr. 107].

As was pointed out in *Holland, supra,* here were two leads which were reasonably susceptible of being checked by both the Hearing Officer and the trial court on the habeas corpus petition. If checked, they, or one of them, might have completely exonerated your petitioner. It was the duty of the Hearing Officer under 8 C. F. R. 151.2(a)(7); 151.3(a) (Pet. App. 44) to check these fundamental safeguards and if the trial court had not acted arbitrarily, it would have observed them. The portions of the record which the trial court had not read might have been the very parts which would have cleared petitioner of any stigma.

These questions are substantial and fundamental and refer to employment of mechanical devices which can easily be tampered with to produce a conviction when the

safeguards are let down. Serious injustice has been done this petitioner, far greater than any penal sentence.

It is of great significance that the respondents' brief makes no attempt to defend the arbitrary conduct of the Hearing Officer *re* the witness Kerr (Pet. 12, 16(8); Pet. App. 24).

> "The history of liberty has largely been the history of observance of procedural safeguards." (*McNabb v. United States*, 318 U. S. 332, 347.)

The *Holland* case has threaded the needle and sewed the hole created by Eagles and this Court's acceptance of this petition will point out the limitations and restrictions of spurious mechanical evidence and the responsibility and duty of a trial court in reviewing proof of same.

Conclusion.

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Court of Appeals for the Ninth Circuit.

Respectfully submitted,

HARRY WOLPIN,
Counsel for Petitioner.

JOHN P. TOBIN,
Of Counsel.

Certificate of Counsel.

I hereby certify that the foregoing petition for rehearing is presented in good faith and is not for delay and is restricted to grounds specified in rules of this Court. January 31, 1955.

HARRY WOLPIN,
Counsel for Petitioner.

JOHN P. TOBIN,
Of Counsel.